Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Virginia, LLC and Verizon South, Inc.,	)	Proceeding No. 15-190
	)	Bureau ID No. EB-15-MD-006
Complainants,	)	
	)	
v.	)	
	)	
Virginia Electric and Power Company	)	
d/b/a Dominion Virginia Power,	)	
	)	
Respondent.	)	

ORDER

Adopted: May 1, 2017 **Released: May 1, 2017**

By the Acting Chief, Market Disputes Resolution Division:

I. INTRODUCTION

1. In this interim Order, we address two threshold issues raised in a pole attachment complaint by Verizon Virginia, LLC and Verizon South, Inc. (collectively, Verizon) against Dominion Virginia Power (Dominion), challenging the contractual rates that Verizon pays to attach to Dominion's electric utility poles. First, we find that the rates Verizon pays for its attachments to Dominion's poles are not just and reasonable, in violation of Section 224(b)(1) of the Communications Act. Second, we conclude that Verizon is entitled to a refund of overpayments it may have made prior to filing its Complaint, subject to true up of the post-Complaint period in question. We issue this interim order on two threshold issues to expedite final resolution of this case in a subsequent order or by settlement.[1]

II. BACKGROUND

A. Legal Framework

2. Pole attachment rates are the charges that owners of utility poles, including electric utility companies, assess when cable television operators, telecommunications carriers, and others attach their lines to utility poles. Section 224(b)(1) of the Communications Act of 1934, as amended (Act), authorizes the Commission to adopt rules to ensure, *inter alia*, that the rates, terms, and conditions of "pole attachments" are "just and reasonable."[2] Prior to 2011, the Commission construed the "just and reasonable" requirement of Section 224(b)(1) to apply to attachments by cable companies and competitive local exchange carriers (LECs), but not to attachments by incumbent LECs, like Verizon.[3]

[1] We express no views at this time with respect to the remaining issues raised in the Complaint.

[2] 47 U.S.C. § 224(b)(1); *id*., § 224(a)(4) (definition of "pole attachment"). *See also* 47 CFR §§ 1.1401-1.1424 (Pole Attachment Complaint Procedures).

[3] *Implementation of Section 224; A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5328, para. 205 & n.614 (2011) (*Pole Attachment Order*), *aff'd sub nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

Under separate provisions codified in subsections 224(d) and (e),[4] respectively, the Commission established formulas to calculate just and reasonable pole attachment rates for cable attachers (Cable Rate) and competitive LEC attachers (Old Telecom Rate).[5]

3. In 2011, the Commission released the *Pole Attachment Order*, in which it adopted a revised formula under Section 224(e) for computing the pole attachment rate paid by competitive LECs (New Telecom Rate), "thereby reducing the disparity between current telecommunications and cable rates."[6] The Commission also concluded for the first time that the "just and reasonable" requirement of Section 224(b)(1) applies to the rates, terms, and conditions governing attachments by incumbent LECs, such as Verizon.[7] The record indicated that, although incumbent LECs had in the past owned nearly as many poles as electric utility companies, incumbent LEC pole ownership rates had declined,[8] leading the Commission to conclude that "market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates, terms and conditions for incumbent LEC[] pole attachments."[9] The order identified "a need for targeted Commission oversight" of incumbent LEC attachment agreements "to ensure just and reasonable rates, terms, and conditions that might not otherwise result from negotiations standing alone."[10]

4. In the *Pole Attachment Order*, the Commission also recognized the necessity of analyzing incumbent LEC attachment rates "in a manner that accounts for the potential differences between incumbent LECs and telecommunications carrier or cable operator attachers."[11] It noted that incumbent LECs are unique in that they own many poles and have historically obtained access to electric utility poles through "joint use" agreements.[12] The Commission observed that such joint use arrangements typically provide incumbent LECs a number of advantages not afforded to telecommunications carrier and cable attachers, such as guaranteed space on poles, lower make-ready costs, and the ability to attach without obtaining advance approval.[13] In light of those differences, the Commission did not adopt a

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[4] 47 U.S.C. § 224(d) (describing cable rate formula); *id.* § 224(e) (describing telecommunications carrier rate formula).

[5] *Pole Attachment Order*, 26 FCC Rcd at 5296-97, paras. 129-31 (discussing adoption of separate formulas for determining maximum allowable just and reasonable pole attachment rates for providers of cable service and telecommunications carriers). For purposes of Section 224, the term "telecommunications carrier"- which is otherwise defined as "any provider of telecommunications services," 47 U.S.C. § 153(51) - "does not include any incumbent local exchange carrier." *See* 47 U.S.C. § 224(a)(5).

[6] *Pole Attachment Order*, 26 FCC Rcd at 5244, para. 8. The Old Telecom Rate compensated pole owners for "fully allocated costs," which are the costs a pole owner incurs in installing and maintaining poles even if there are no other attachers. The New Telecom Rate excludes recovery for a number of these costs, and usually results in a rate that is closer to the Cable Rate. *Id.*, 26 FCC Rcd at 5300-01, paras. 141-42.

[7] *See id.*, 26 FCC Rcd at 5331, para. 209 ("incumbent LECs are entitled to pole attachment rates, terms and conditions that are just and reasonable pursuant to Section 224(b)(1)"); *see also id.* at 5243-44, 5327-28, 5330, paras. 8, 202, 208. Unlike cable and competitive LEC attachers, however, incumbent LECs have no right of access to utilities' poles pursuant to Section 224(f)(1). *Id.* at 5328, 5329-30, 5332-33, paras. 202, 207, 212 & n.643.

[8] *Id.* at 5328-29, para. 206.

[9] *Id.* at 5327, para. 199.

[10] *Id.* at 5244, para. 8.

[11] *Id.* at 5333, para. 214.

[12] *Id.* at 5334, para. 214.

[13] *Id.* at 5335, para. 216 n.654.

formula for calculating the rate to be paid by incumbent LECs, opting instead to resolve incumbent LEC disputes on a case-by-case basis in complaint proceedings brought before the Commission.[14] The Commission found it reasonable to use the Old Telecom Rate "as a reference point" in complaint proceedings filed by incumbent LECs to "account for particular arrangements that provide net advantages to incumbent LECs" relative to competitive LECs.[15]

B. The Joint Use Agreements and the Parties' Dispute

5. Dominion and both Verizon South and Verizon Virginia have longstanding relationships as joint users of poles owned by Dominion or Verizon in the parties' overlapping service areas in Virginia.[16] The record reflects that Dominion has at all times relevant to this proceeding owned approximately 65 percent of the parties' joint use poles.[17] In 2006, Dominion and Verizon South began negotiating a new joint use agreement to replace a prior agreement in effect since 1978.[18] Thereafter, Dominion and Verizon Virginia similarly agreed to replace their prior joint use agreement in effect since 1992.[19] Although the parties concluded negotiations and reached an agreement in principal in late 2010, Dominion and Verizon executed virtually identical agreements (Joint Use Agreements)[20] in May and August 2011, respectively,[21] with an effective date of January 1, 2011.[22]

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[14] *Id.* at 5328, 5334, paras. 203, 214. *See also id.* at 5287, para. 102 & n.319 (indicating that in order to expedite pole attachment complaints, "whenever possible, the Enforcement Bureau will resolve pole attachment complaints itself, to the extent permitted by its delegated authority.").

[15] *Id.* at 5337, para. 218.

[16] *See Verizon Virginia LLC and Verizon South Inc. v. Virginia Electric and Power Company d/b/a/ Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Pole Attachment Complaint, at 42, para. 90 (Aug. 3, 2015) (Compl.) (referencing the parties' decades-old relationship); *Verizon Virginia LLC and Verizon South Inc. v. Virginia Electric and Power Company d/b/a/ Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Response to Pole Attachment Complaint, at 4 (Nov. 18, 2015) (Resp.) (referencing a succession of reciprocal attachment agreements dating back over seventy years). Any reference to the parties' historic joint use agreements includes any predecessor companies of the parties, as relevant.

[17] The shared Dominion-Verizon network consists of [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] poles, with Dominion owning or controlling [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] poles (65 percent) and Verizon owning or controlling [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] poles (35 percent). *See* Compl. at 6-7, para. 6; Resp., Exh. B (Declaration of William Zarakas) at 3, para. 4 (Zarakas Decl.); Resp. at 13 ("[T]he parties agree that the balance of pole ownership between Dominion and Verizon has not varied over the last several decades of their joint use relationship."); *see also* Reply at 11.

[18] Compl., Exh. B (Affidavit of Stephen Mills) at 4, para. 10 (Mills Aff.); Resp., Exh. A (Declaration of Michael Graf) at 3, 5, paras. 5, 10 (Graf Decl.).

[19] Compl., Exh. B (Mills Aff.) at 4, para. 10; Resp., Exh. A (Graf Decl.) at 5, para. 10 n.9.

[20] *See* Compl., Exh. 1, General Joint-Use Agreement Between Verizon Virginia and Dominion (Jan. 1, 2011) (Verizon Virginia Agreement); Compl., Exh. 2, General Joint-Use Agreement Between Verizon South and Dominion (Jan. 1, 2011) (Verizon South Agreement).

[21] Compl. at 6, para. 5 & n.17; Resp. at 5 & n.14; *id.*, Exh. A (Graf Decl.) at 3, 5, 6, 7, paras. 5, 10, 14, 16; Compl., Exh. B (Mills Aff.) at 4, 6-7, paras. 10, 18. Although Verizon does not indicate when the Joint Use Agreements were executed, it does not dispute Dominion's representation that they were executed by Dominion and Verizon in May and August 2011, respectively.

[22] *See* Joint Use Agreements, Recitals.

6. The Joint Use Agreements reserve [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of usable space on each pole to Dominion and [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of usable space to Verizon.[23] They also include, *inter alia*, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL][24] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL][25] [BEGIN CONFIDENTIAL] END CONFIDENTIAL][26]

7. In a letter dated October 8, 2013, Verizon notified Dominion of its request for [BEGIN CONFIDENTIAL] [END CONFIDENTIAL][27] Over the next several months, the parties participated in extensive negotiations, including private mediation, in an effort to resolve their differences regarding the annual pole rental rates.[28] In light of their failure to agree on an alternative rate framework, Dominion has continued to bill Verizon for its attachments to Dominion's poles in accordance with the Joint Use Agreements.[29]

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[23] Joint Use Agreements, Exh. D; Compl. at 10, para. 13; Resp. at 18.

[24] Joint Use Agreements, Art. 33 & Exhs. A-F. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] *Id.*

[25] Joint Use Agreements, Art. 11.01.

[26] *Id.* Art. 11.02 states, however, that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Joint Use Agreements, Art. 11.02.

[27] Compl., Exh. 13 (Letter from Stephen Mills, Verizon, to Arlie Hahn, Dominion (Oct. 8, 2013) (October 2013 Letter)). Article 33.08 of the Joint Use Agreements states:

> [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Joint Use Agreements, Art. 33.08.

[28] Compl. at 13-17, paras. 21-30; Resp. at 7-9. These discussions concluded on May 29, 2015. *See* Compl., Exh. 23 (Email from John Douglass, private mediator, to Christopher Huther, Counsel for Verizon, and Brett Heather Freedson, Counsel for Dominion (June 2, 2015)). Most recently, the parties participated in staff supervised mediation at the Commission. *See* Letter from Lisa Boehley, FCC, to Christopher Huther and Claire Evans, Verizon, and Brett Heather Freedson, Charles Zdebski, and Robert Gastner, Dominion (June 23, 2016) (commencing Mediation Process); Letter from Rosemary McEnery, FCC, to Christopher Huther and Claire Evans, Verizon, and Brett Heather Freedson, Charles Zdebski, and Robert Gastner, Dominion (Nov. 17, 2016) (concluding Mediation Process).

[29] Resp. at 9 & n.39 (referencing Joint Use Agreements, Arts. 33.07, 33.08). For their attachments on Dominion-owned poles, Verizon Virginia and Verizon South were charged under the Joint Use Agreements the following per pole rental rates for 2011 through 2015, respectively: [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] For its attachments on Verizon Virginia-owned poles during this same time

8. [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][32] In October 2016, Dominion provided to Verizon a "Notice of Default" alleging *inter alia* that Verizon had failed to remit full payment for annual pole rental fees for the 2015 and 2016 rate years.[33] Dominion alleges that Verizon has withheld more than $10 million of annual pole rental fees owed to Dominion under the parties' agreements.[34]

C. The Pole Attachment Complaint

9. In its Complaint, Verizon alleges that the annual pole rental rate in the Joint Use Agreements is unjust and unreasonable under Section 224 and the Commission's pole attachment rules.[35] According to Verizon, the "exorbitant" rate in the Joint Use Agreements "resulted from Dominion's superior bargaining power and the insufficiency of 'market forces and independent negotiations . . . to ensure just and reasonable rates.'"[36] Verizon maintains that it does not receive under the Joint Use Agreements "any unique benefits" that would justify a higher rate than the rates paid by other carriers that attach to Dominion's poles, and therefore asks the Commission to set its rate at the "properly calculated" New Telecom Rate and to refund to Verizon any "overpayments" it has made under the agreements since the

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period, Dominion was charged under the Joint Use Agreements the following per pole rental rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For its attachments on Verizon South-owned poles, Dominion was charged under the Joint Use Agreements the following per pole rental rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[30] Resp. at 23; Reply at 3, 56-57.

[31] Resp. at 23; Reply at 3, 5, 57. Dominion states that Verizon's 2015 payment represents 11 percent of the total annual pole rental fees invoiced for that year pursuant to the Joint Use Agreements. Resp. at 9.

[32] Resp. at 23; Reply at 3, 57. In November 2015, Dominion brought a state court action against Verizon in an effort to enforce the Joint Use Agreement rates. *See* Compl., *Va. Elec. and Power Co. v. Verizon Virginia LLC and Verizon South Inc.*, Case No. CL15-3029-00 (Va. Cir. Ct. Nov. 18, 2015) (pending).

[33] Letter from Anthony Barni, Dominion, to Verizon Virginia and Verizon South at 1-2 (Oct. 13, 2016) (providing Verizon 60 days under Article 13.03 of the Joint Use Agreements to "cure the above defaults"). Over Verizon's objections, Dominion notified Verizon upon expiration of the 60-day "cure period" of its plan, "effective immediately, [to decline] to authorize any additional attachments requested by Verizon" under the Joint Use Agreements. *See* Letter from Anthony Barni, Dominion, to Verizon South and Verizon Virginia at 1 (Dec. 13, 2016) (also reserving "the right to remove, without any further notice to Verizon . . . any attachment made without Dominion's authorization in violation of this mandate"); *see also* Letter from David Gudino, Verizon, to Anthony Barni, Dominion at 1 (Nov. 1, 2016); Letter from Christopher Huther, Verizon, to Brett Heather Freedson, Dominion at 1-2 (Dec. 9, 2016).

[34] Letter from Brett Heather Freedson, Dominion, to Christopher Killion, FCC at 1-2 (Jan. 6, 2017).

[35] Compl. at 5, 7-8, 50, paras. 1 (citing 47 U.S.C. § 224 and 47 CFR §§ 1.1401-1.1424), 8-9, 107. Both parties note that the Commonwealth of Virginia has not certified that it regulates the rates, terms, and conditions for pole attachments in the manner established by Section 224, such as would preempt the Commission's jurisdiction over pole attachments in Virginia. *See* Compl. at 5, para. 4; Resp. at 3.

[36] Compl. at 7-8, para. 8 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5327, para. 199); Reply at 22.

July 12, 2011 effective date of the *Pole Attachment Order*.[37] In the alternative, if the Joint Use Agreements *do* provide Verizon a material advantage relative to competitive attachers, Verizon argues that it should pay no more than the Old Telecom Rate.[38]

III. DISCUSSION

A. Standards for Commission Review of Incumbent LEC Complaints

10. In the *Pole Attachment Order*, the Commission held that incumbent LEC attachers are entitled to the protections of Section 224(b), but "decline[d] . . . to adopt comprehensive rules governing" incumbent LEC pole attachments, opting instead "to proceed on a case-by-case basis."[39] The Commission identified certain factors that it would consider, however, in determining the "need for targeted Commission oversight to ensure just and reasonable rates, terms, and conditions" including, whether a particular joint use agreement pre or post-dates the *Pole Attachment Order*.[40] In particular, the Commission expressed reluctance to disturb terms or conditions in joint use agreements that were entered into prior to the adoption of the *Pole Attachment Order* between parties with relatively equal bargaining power, and indicated that it would be "unlikely to find the rates, terms and conditions in [such] ***existing*** joint use agreements unjust or unreasonable."[41] By contrast, the Commission stated that it would review ***new*** joint use agreements, *i.e.*, those entered into following adoption of the *Pole Attachment Order*, "based on the totality of those agreements," and consistent with the Commission's directives regarding similar treatment of similarly situated providers.[42]

11. In this case, Dominion asserts that the Joint Use Agreements are "existing" agreements, "entitled to the presumption of having resulted from balanced arms-length negotiations between Dominion and Verizon."[43] Dominion notes that the negotiations, which spanned several years, concluded prior to the *Pole Attachment Order* and that the effective date in the agreements predates the *Pole Attachment Order* by several months.[44] Dominion therefore urges the Commission "to defer to the negotiated terms and conditions" in those agreements.[45] In its Reply, Verizon argues that, unlike the "historic" joint use agreements contemplated in the Commission's discussion, the present agreements are not long-standing and were not signed until after the date of the *Pole Attachment Order*, giving the parties

[37] Compl. at 7-8, 17-39, 43-46, paras. 8, 32-84, 93-98; *see also Verizon Virginia LLC and Verizon South Inc. v. Virginia Electric and Power Company d/b/a/ Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Pole Attachment Complaint Reply at 77 (Feb. 9, 2016) (Reply). [BEGIN CONFIDENTIAL] [redacted] END CONFIDENTIAL] Compl. at 3-4 & n.11; Reply at 22-23, 58-59.

[38] Compl. at 48-49, paras. 101-104; Reply at 83 n.462.

[39] *Pole Attachment Order*, 26 FCC Rcd at 5334, para. 214.

[40] *Id.*, 26 FCC Rcd at 5243-44, 5328, 5333-37, paras. 8, 203, 214-19.

[41] *Id.*, 26 FCC Rcd at 5334-35, para. 216 (emphasis added) & n.654 ("Nothing in the record suggests that existing agreements between incumbent LECs and electric utilities were entered into with the expectation that their provisions would be subject to Commission review.").

[42] *Id.*, 26 FCC Rcd at 5336, para. 216 & n.656.

[43] Resp. at 12.

[44] *Id.*

[45] *Id.* at 11 (noting that the Commission has "repeatedly stated its intent to defer to the negotiated terms and conditions of historic joint use agreements, such as those governing the relationship between Dominion and Verizon").

reason to expect that their provisions would be subject to Commission review.[46]

12. Due to the unique circumstances presented here, we conclude that the Joint Use Agreements should be considered "new" agreements, notwithstanding their pre-*Pole Attachment Order* effective date, because (1) they were executed several months after the Commission released the *Pole Attachment Order*, thus affording both parties the opportunity to assess their rights and responsibilities under that order,[47] and (2) they were not simply extensions of long-standing agreements, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][48]

13. Although Dominion concedes that an incumbent LEC's inferior bargaining position and inability to terminate an agreement are also factors the Commission may consider in evaluating an incumbent LEC's pole attachment complaint, it claims that Verizon has demonstrated neither circumstance.[49] We disagree. While pointing to rate reductions accorded Verizon in the Joint Use Agreements as evidence of Verizon's bargaining power, Dominion fails to mention that, after four years of intensive rate negotiations, the rate reductions to which it refers were offset by significantly greater rate reductions achieved by Dominion.[50] After four years of negotiations, the record reflects that the per-pole rate charged to Verizon [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] even though Dominion uses significantly more space on each joint use pole than Verizon.[51] The record also reflects a consistent disparity in relative pole ownership levels throughout the course of the parties' joint use relationship, with Dominion owning 65 percent and Verizon owning 35 percent of the joint use poles at all relevant times.[52] Recognizing the Commission's

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[46] Reply at 8-10; *id.* at 10 ("The Joint Use Agreement[s] remain[] 2011 agreement[s] signed with complete knowledge of the Commission's rate reforms.").

[47] Compl. Exh. 18 (Letter from Steven Mills, Verizon, to Arlie Hahn, Dominion at 1 (March 25, 2014) (noting that "the current agreements were signed a few months after the FCC 11-50 ruling . . . .") (March 2014 Letter)); Resp., Exh. A (Graf Decl.) at 7, para. 16 (noting that Dominion signed the Joint Use Agreements in May 2011, but did not receive the countersigned documents from Verizon until August 1, 2011).

[48] *See, e.g.*, Resp., Exh. A (Graf Decl.) at 3, paras. 5, 6 (noting that the Joint Use Agreements were the "first identical agreements that Dominion authorized for both of Verizon's operating companies within the parties' shared service area[,]"[BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]; Resp., Exh. C (Declaration of Michael Roberts) at 3, para. 7 (Roberts Decl.) [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[49] Resp. at 11.

[50] Resp. at 13 (stating that the Joint Use Agreements resulted in a [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[51] *See* Section III.B *infra*.

[52] Compl. at 11, para. 16; Resp. at 4-5. Although Dominion faults Verizon for not doing more to increase its own pole ownership stake in the parties' joint use network, it concedes that Verizon [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] *See* Resp. at 13-14; Resp., Exh. A (Graf Decl.) at 5-6, paras. 12-13. Dominion also claims that Verizon could have increased its pole

concern that an incumbent LEC's minority pole ownership status may negatively impact the incumbent LEC's bargaining position, we find that Dominion's nearly two-to-one pole ownership advantage, along with the significant disparity in the per-pole rates charged to each party, constitutes probative evidence of Verizon's inferior bargaining position relative to Dominion.[53]

14. Finally, review of the Joint Use Agreements is appropriate based on evidence demonstrating that Verizon "genuinely lacks the ability to terminate [the agreements] and obtain a new arrangement."[54] [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] we agree with Verizon that it "genuinely lacks the ability to terminate" the agreements.[55]

B. The Joint Use Agreement Rate Is Not Just and Reasonable Under Section 224(b)

15. Verizon offers two main arguments to support its claim that the Joint Use Agreement rates are not just and reasonable. First, Verizon argues that any unique advantages that it receives under the Joint Use Agreements do not justify a rate that it contends is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] According to Verizon, the 2015 New and Old Telecom Rates were $6.51 and $9.87 "per pole," respectively.[56] By Verizon's calculations, the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole rate that it pays under the Joint Use Agreements therefore exceeds the New Telecom Rate by approximately [BEGIN

ownership stake by [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[53] *Pole Attachment Order*, 26 FCC Rcd at 5327, para. 199 (noting potential impact of disparate pole ownership on parties' relative bargaining power); *see also id.* at 5329, para. 206 & n.618 (expressing concern that, because electric utilities, in the aggregate, own approximately 65-70 percent of all poles today, "incumbent LECs . . . may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations in some cases"). Dominion asserts that, because the parties' relative ownership percentages have not varied over the years, the 65-35 ratio here does not implicate Commission concerns about unequal bargaining power given that the Commission stated a concern only with respect to *increasing* pole ownership disparities between utilities and incumbent LECs. Resp. at 12-13. The Commission, however, did not limit its holding to situations in which a pole ownership disparity was increasing, and we reject the suggestion that such a limitation was intended given that it would deny relief to incumbent LECs whose inferior bargaining positions have continuously impacted their ability to negotiate a just and reasonable rate over time. *See Pole Attachment Order*, 26 FCC Rcd at 5334-35, para. 216 (noting that "long-standing agreements *generally* were entered into at a time when incumbent LECs . . . were in a more balanced negotiating position with electric utilities, at least based on relative pole ownership.") (emphasis added).

[54] *See Pole Attachment Order*, 26 FCC Rcd at 5335-36, para. 216 ("To the extent that an incumbent LEC can demonstrate that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement, the Commission can consider that as appropriate in a complaint proceeding.").

[55] *See* Joint Use Agreements, Art. 11.01 (stating in relevant part: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Compl. at 6, para. 5 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5335-36, para. 216); *see also id.* at 6 n.19; Reply at 11.

[56] *See* Reply at 83 & n.462.

CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole and exceeds the Old Telecom Rate by approximately [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole.[57]

16. In its Response, Dominion contends that the 2015 New and Old Telecom Rates were instead [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] respectively.[58] We note, however, that pole attachment rates are correctly calculated [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][59] Thus, even under Dominion's calculations, the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Joint Use Agreement rate is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] the New Telecom Rate,[60] and is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] than the Old Telecom Rate – which the Commission highlighted as a reference point to account for differences between competitive LEC and incumbent LEC attachments.[61]

17. Verizon has adduced substantial evidence in support of its argument that any advantages it obtains under the Joint Use Agreements do not remotely justify the difference between the rate it pays and the rate that competitive LECs pay to attach to Dominion's poles.[62] Based on that evidence, we find that Verizon has met its burden of showing that the rate it pays under the Joint Use Agreements is unjust and unreasonable. Any unique advantages Verizon receives under those agreements do not justify a rate that is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] the Old and New Telecom Rates.[63]

18. Although Dominion maintains that unique benefits provided to Verizon under the Joint Use Agreements justify the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] that it charges Verizon, our review of the record suggests that Dominion has overstated the value of a number of such alleged benefits.[64] For example, Dominion identifies as a financial benefit the fact that Verizon [BEGIN CONFIDENTIAL] [redacted]

[57] Reply, Exh. A (Calnon Aff.) at 2, para. 2 & n.3; Reply, Exh. 8 (2015 invoice). The Joint Use Agreement rate that Dominion charged Verizon in 2015 was [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole, which is the most recent rate year included in the record.

[58] *See* Resp. at 32; Resp., Exh. C (Roberts Decl.), Exh. MCR-1.

[59] Dominion's argument that the Old and New Telecom Rates should be applied on a [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[60] Resp., Exh. C (Roberts Decl.), Exh. MCR-1.

[61] *See Pole Attachment Order*, 26 FCC Rcd at 5337, para. 218; Compl. at 9, para. 12.

[62] *See, e.g.*, Compl. at 7-8, 20-39, paras. 8, 37-84; Reply at 23-62.

[63] Verizon asserts that, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Compl. at 21, para. 38; Reply at 58. We express no view on that claim in this interim Order.

[64] Resp. at 2.

[END CONFIDENTIAL][65] The Joint Use Agreements, however, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL][66] Where Verizon performs a particular service itself and incurs costs comparable to its competitors in performing that service, we agree with Verizon that Dominion may not "embed in Verizon's rental rate costs that Dominion does not incur."[67]

19. In addition, although Dominion argues that it is [BEGIN CONFIDENTIAL] [END CONFIDENTIAL][68] [END CONFIDENTIAL]

20. Moreover, with only a few exceptions, Dominion does not quantify the purported material advantages that Verizon receives under the Joint Use Agreements and therefore fails to justify charging rates [BEGIN CONFIDENTIAL] [END CONFIDENTIAL][70] Where Dominion does attempt to assign a monetary value to particular purported advantages, it generally presents those values as the amount that all of its licensees "collectively" paid, thus omitting the information needed to analyze whether, and, if so, the extent to which, Verizon has been advantaged relative to a typical competitor or an average of its competitors.[71]

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[65] *See* Resp. at 19-20; Resp., Exh. A (Graf Decl.), Exh. MAG-1 at 1-2 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

[66] *See* Joint Use Agreements, Art. 15.03 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]; Compl., Exh. C (Hansen Aff.) at 3-4, para. 8 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

[67] Reply at 32; *id*. at 31-33 (arguing that where Verizon pays for its own [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] by performing the work itself, and Dominion does not identify any costs that Verizon has not covered, Dominion may not justify charging higher rates to Verizon based on costs that only Verizon incurs). To charge a higher rate on this basis would effectively double charge Verizon – once when Verizon performs work [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

[68] *See, e.g.*, Resp., Exh. A (Graf Decl.), Exh. MAG-1 at 2 (citing Joint Use Agreements, Arts. 17.01, 20.01, 21.01).

[69] Compl., Exh. A (Affidavit of Mark S. Calnon) at 37, paras. 77-79 (Calnon Aff.); Reply at 36-37; Joint Use Agreements, Art. 26.01 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

[70] Once a *prima facie* showing has been made by the complainant, the Commission's pole attachment complaint rules require the respondent to "set forth justification for the rate, term or condition alleged in the complaint not to be just and reasonable." *See* 47 CFR § 1.1407(a).

[71] *See, e.g.*, Resp. at 19 ("Dominion estimates that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]; Resp., Exh. A (Graf Decl.), Exh. MAG-1 at 5 ("Over the 2011-2014 time frame, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

21. Verizon next argues that the per-pole rate that Dominion charges Verizon is unjust and unreasonable because it far exceeds the per-pole rates that Verizon charges Dominion, despite the fact that Dominion uses significantly more space on each joint use pole than Verizon.[72] In fact, the record reflects that the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] rate charged to Verizon in 2015 was [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] than the rate charged to Dominion to attach to Verizon Virginia poles (which account for 91 percent of the joint use poles belonging to Verizon), and [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] than the rate charged to Dominion to attach to Verizon South poles (which account for nine percent of the joint use poles belonging to Verizon).[73] The record confirms that, although Dominion's space allocation is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] that of Verizon, Dominion pays [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] under the Joint Use Agreements for its use of that space.[74] Dominion argues that a simple comparison of annual pole rates "ignores that the parties divide costs associated with their combined pole network in direct proportion to the benefits that each derives from the joint use arrangement."[75] It concedes, however, that the parties enjoy "reciprocal" rights under the Joint Use Agreements.[76] By identifying as alleged "benefits" to Verizon services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements, Dominion has failed to show that Verizon receives a disproportionate benefit that would account for the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] between the parties.[77] We therefore conclude that Dominion has not justified charging Verizon a rate [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] the rates charged to Dominion under the Joint Use Agreements.[78]

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[72] Compl. at 10-11, para. 13.

[73] For Verizon's attachments on Dominion poles from 2011-2015, Dominion charged, under the Joint Use Agreements, the following per pole rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For Dominion's attachments on Verizon Virginia poles from 2011-2015, Verizon charged the following per-pole rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For Dominion's attachments on Verizon South poles from 2011-2015, Verizon charged the following per-pole rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[74] The Joint Use Agreements allocate [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] of space on each joint use pole to Dominion and [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] of space on each joint use pole to Verizon.

[75] Resp. at 28.

[76] *Id*. at 4.

[77] [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] *See* Resp., Exh. B (Zarakas Decl.) at 8, para. 14.

[78] *See Pole Attachment Order*, 26 FCC Rcd at 5337, para. 219 ("[I]n evaluating an incumbent LEC's complaint, the Commission may also consider the rates, terms and conditions that the incumbent LEC offers to the electric utility or other attachers for access to the incumbent LEC's poles, including whether they are more or less favorable than the rates, terms and conditions the incumbent LEC is seeking."); *see also id.*, 26 FCC Rcd at 5337, para. 218 n.662 (anticipating that incumbent LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole "such as the same rate per foot of occupied space"). Verizon asserts that the rate it is charged under the Joint Use Agreements also [BEGIN CONFIDENTIAL] [redacted]

22. Accordingly, because Dominion has provided insufficient justification for the Joint Use Agreement rates, we conclude that the rate charged to Verizon under those agreements is unjust and unreasonable. We encourage the parties to negotiate an agreed-upon rate that is consistent with the guidance provided herein. Although we do not establish a new pole attachment rate at this time, we commit to doing so in a subsequent order if the parties are unable to achieve a negotiated resolution of the issues in dispute.[79]

C. Verizon Is Entitled to a Refund of Overpayments Made to Dominion

23. Verizon contends that the "sign and sue rule" permits it to challenge the unjust and unreasonable rates in the Joint Use Agreements and to seek a refund under Rule 1.1410(a)(3)[80] of any amounts it is determined to have overpaid dating back to the effective date of the *Pole Attachment Order*.[81] We agree.[82]

24. Under the Commission's "sign and sue rule," "an attacher may execute a pole attachment agreement with a utility, and then later file a complaint challenging the lawfulness of a provision of that agreement."[83] The rule was adopted at a time when only cable operators and competitive LECs, and not incumbent LECs, were deemed to have a right to just and reasonable rates, terms, and conditions under Section 224(b). In adopting the sign and sue rule, the Commission expressed concern that utilities' "monopoly control" over poles could force attachers to accept unreasonable terms as a condition for gaining timely access to utility poles.[84] The Commission also has observed a need for the sign and sue

[redacted] END CONFIDENTIAL]

[79] *See* Section IV *infra*.

[80] 47 CFR § 1.1410(a)(3) (stating that if the Commission determines that a rate is unjust and unreasonable, it may order a refund of "the difference between the amount paid under the unjust and/or unreasonable rate … and the amount that would have been paid under the rate … established by the Commission, plus interest, consistent with the statute of limitations").

[81] Compl. at 7-8, para. 8 (arguing that it was compelled to enter into agreements as a result of "Dominion's superior bargaining power and the insufficiency of market forces and independent negotiations" to ensure just and reasonable rates) (internal quotations omitted); *see also id.* at 11-17, 42-43, 46, paras. 15-31, 91, 98; Reply at 9, 77 (asking the Commission to "set Verizon's just and reasonable rate as of July 12, 2011 at the properly calculated new telecom rate and order Dominion to refund [the amount of any] net rentals that Verizon has since overpaid."). Verizon also asks the Commission to impose new just and reasonable rates on a prospective basis.

[82] Any rate relief for the pre-Complaint period is subject to true up and therefore must take into account all amounts invoiced and paid after July 12, 2011.

[83] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11905, para. 99 (2010); *Southern Co. Servs. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002) (under the "sign and sue" rule, "an attacher may 'sign' a contract with a utility and later file a complaint with the FCC to contest an element of that agreement deemed to be unfair").

[84] *See, e.g., Amendment of the Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12112, para. 13 (2001) (noting that "the original purpose of the Pole Attachment Act" was "to prevent utilities from charging monopoly rents to attach to their bottleneck facilities" and that "[n]othing in the record demonstrates that the utilities' monopoly over poles has since changed"); *Pole Attachment Order*, 26 FCC Rcd at 5294, para. 123 ("the sign and sue rule was adopted in recognition that in some situations . . . an attacher may be

rule in situations where an attacher "acquiesces in a utility's 'take it or leave it' demand that it pay more than the statutory maximum . . . without any *quid pro quo* other than the ability to attach its wires on unreasonable or discriminatory terms."[85]

25. When the Commission first held in the *Pole Attachment Order* that incumbent LEC attachers are entitled to just and reasonable rates, terms, and conditions under Section 224(b), it recognized the need to "account[] for the potential differences between incumbent LECs and telecommunications carrier or cable operator attachers[,]" including with respect to applying the sign and sue rule to incumbent LECs.[86] At that time, the Commission considered it unlikely that electric utilities would attempt to coerce incumbent LECs to accept unreasonable terms by threatening a loss of access to the utilities' poles, "given the likelihood that incumbent LECs [as pole owners themselves] would, in response, deny electric utilities access to their poles."[87] Nonetheless, the Commission allowed for the possibility that incumbent LEC attachers, like cable and competitive LEC attachers, may be coerced to enter pole attachment agreements that include unjust and unreasonable terms as a result of a utility's unequal bargaining power.[88] In such a case, the Commission determined that "the 'sign and sue' rule will apply [] in a manner similar to its application in the context of pole attachment agreements between pole owners and either [cable or competitive LEC attachers]."[89]

26. The record reveals that, after years of intensive rate negotiations, Verizon faced a choice to accept what it believed were unjust and unreasonable rates under the Joint Use Agreements or [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][90] While the record does not suggest that Dominion threatened Verizon with loss of access to its poles, the evidence reflects that Verizon nonetheless was coerced into signing the Joint Use Agreements as a result of Dominion's superior bargaining position.[91] In particular, years of rate negotiations had failed to achieve [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] in Verizon's net per pole rate,[92] and Verizon's leverage and options were further constrained by [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][93] That is, [BEGIN CONFIDENTIAL] [redacted]

forced to execute a pole attachment agreement containing what it believes to be unjust and unreasonable terms in order to gain timely access to the utility's poles.").

[85] *See Pole Attachment Order*, 26 FCC Rcd at 5294, para. 123 n.380 (quoting *Southern Co. Servs.*, 313 F.3d at 583 (quoting Commission Brief with approval); *see also Southern Co. Servs.*, 313 F.3d at 583 ("sign and sue" is likely to arise where "the attacher has agreed, for one reason or another, to pay a rate above the statutory maximum . . . to which it is entitled under the Pole Attachments Act and the Commission's rules").

[86] *Pole Attachment Order*, 26 FCC Rcd at 5333, para. 214; *id.* at 5335, para. 216 n.655.

[87] *Id.* at 5335, para. 216 n.655.

[88] *Id.*

[89] *Id.*

[90] In 2010, Verizon Virginia and Verizon South paid a gross rate of [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] under the parties' prior agreements. *See* Resp. at 13; Compl. at 41, para. 88 & n.221.

[91] Denial of access to a utility's poles represents one possible scenario that may support an attacher's right to sign and sue. *Pole Attachment Order*, 26 FCC Rcd at 5335, para. 216 n.655.

[92] *See* Section III.B *supra*.

[93] Compl., Exh. 5 (Verizon Virginia predecessor agreement), Art. 8; *id.*, Exh. 7 (Verizon South predecessor agreement), Art. VIII [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].

[redacted] END CONFIDENTIAL][94] Verizon's choices were reduced to accepting the Joint Use Agreement rates or remaining locked into even higher rates indefinitely pending final resolution of any formal proceedings brought to challenge those rates. Under these circumstances, Verizon's decision to sign the Joint Use Agreements and then file a complaint challenging the agreement rates, constitutes a valid exercise of its sign and sue rights.[95]

27. Dominion argues that, even if the sign and sue rule were applicable here, Verizon did not properly invoke the sign and sue rule or take steps necessary to preserve its sign and sue rights.[96] For example, Dominion suggests that, after release of the *Pole Attachment Order*, Verizon was required to notify it before signing the Joint Use Agreements, if Verizon believed that the agreement rates were unlawful under that order.[97] The *Pole Attachment Order* expressly rejected a proposed rule that would have required an attacher to provide a utility written notice of its objections to a proposed pole attachment agreement, during contract negotiations, as a prerequisite to later bringing a complaint challenging the executed agreement.[98]

28. Dominion's suggestion that the requested relief should be rejected because Verizon unduly delayed filing its complaint is similarly without merit.[99] In the *Pole Attachment Order*, the Commission declined to impose time limits on the filing of pole attachment complaints and, instead, determined to allow monetary recovery dating back as far as the July 12, 2011 effective date of the order, "consistent with the applicable statute of limitations."[100] In this case, it appears that Verizon signed the Joint Use Agreements in August of 2011[101] and, at the earliest opportunity permitted under the agreements, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][102] The

[94] Compl., Exh. 5 (Verizon Virginia predecessor agreement), Art. 3; *id.*, Exh. 7 (Verizon South predecessor agreement), Art. III [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].

[95] *See generally Pole Attachment Order*, 26 FCC Rcd at 5333, 5335, paras. 214, 216 n.655 (recognizing the need to "account[] for the potential differences between incumbent LECs and telecommunications carrier or cable operator attachers[,]" including with respect to applying the sign and sue rule to incumbent LECs); *id.* at 5335-36, para. 216 ("To the extent that an incumbent LEC can demonstrate that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement, the Commission can consider that as appropriate in a complaint proceeding.").

[96] Resp. at 17 n.79; *id.* at 16-17 (suggesting that, if Verizon believed the Joint Use Agreement rates were unjust and unreasonable, it could have demanded further negotiations before signing them or it could have signed them and then exercised its "sign and sue" rights thereafter, and asserting that "Verizon did neither").

[97] Resp. at 16.

[98] *Pole Attachment Order*, 26 FCC Rcd at 5292-95, paras. 119-25.

[99] *See* Resp. at 17.

[100] *Pole Attachment Order*, 26 FCC Rcd at 5287-90, 5334, paras. 106, 110-12, 214 & nn.343, 345, 647; *id.* at 5289, para. 110 (reasoning that the former rule, which allowed recovery only from the date the complaint was filed, fails to make injured attachers whole, and is inconsistent with the way claims for monetary recovery are generally treated under the law).

[101] Resp. at 5 (citing Graf Decl., para. 16); Reply at 8-9.

[102] Compl., Exh. 13 (October 2013 Letter); Joint Use Agreements, Art. 33.08 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].

record shows that the parties then embarked on another 20 months of rate negotiations that concluded on May 29, 2015 without resolving the contested issues, and that Verizon then filed its Complaint on August 3, 2015.[103] Consistent with the Commission's decision authorizing refunds to extend back as far as the applicable statute of limitations allows,[104] but no earlier than the *Pole Attachment Order* effective date, we reject the suggestion that, by waiting until August 3, 2015, Verizon unduly delayed filing its Complaint.[105]

IV. CONCLUSION

29. In light of our interim findings that the Joint Use agreement rate is not just and reasonable, we direct the parties to meet and confer in an effort to resolve the remaining disputes. The parties should report to Commission staff within 30 days as to their progress. If the case cannot be resolved by settlement, Commission staff will conduct any further proceedings necessary to issue a subsequent order resolving all remaining issues and setting a just and reasonable pole attachment rate.

30. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i), 4(j), 208, 224, 301, 303, 304, 309, 316, and 332 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, 301, 303, 304, 309, 316, and 332, and Sections 0.111(a)(12), 0.311, 1.720-1.735, and 1.1401-1.1424 of the Commission's rules, 47 CFR §§ 0.111(a)(12), 0.311, 1.720-1.735, and 1.1401-1.1424, that the Complaint is GRANTED, in part, to the extent set forth in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary H. McEnery
Acting Chief
Market Disputes Resolution Division

[103] Compl. at 13-17, paras. 21-30; Resp. at 7-9; Compl., Exh. 23 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] (May 29, 2015)).

[104] Verizon contends that Section 8.01-246(2) of the Virginia Code provides the applicable statute of limitations in this case and that its Complaint was filed within the five-year limitations period specified therein. *See* Reply at 9 n.33. Dominion does not dispute this contention.

[105] We also reject Dominion's claim that Verizon's alleged failure to comply with Rule 1.1404(k) offers a basis to deny the requested relief. Resp. at 38-40. Dominion does not dispute that Verizon engaged in extensive executive-level discussions, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] in a serious effort to resolve the parties' dispute prior to filing its Complaint. Contrary to Dominion's claim, however, the record reflects that Verizon's March 25, 2014 letter, in conjunction with other correspondence within the same timeframe, fully outlined the basis for Verizon's demand for a just and reasonable rate under Section 224(b) and the *Pole Attachment Order*. *See, e.g.*, Compl., Exhs. 13, 14, 16, 18, 22, 23. Based on evidence that Verizon fully complied with the substantive goals and requirements of Rule 1.1404(k) (i.e., executive-level, pre-Complaint coordination and preview of substantive allegations), we find good cause to waive any procedural aspect of the rule with which Verizon may not have strictly complied. *See* 47 CFR § 1.3 (allowing waiver of Commission rule for "good cause shown").